



## STIPULATIONS

The parties have stipulated to the following:

1. On April 1, 1991:

- a. The Claimant, Kim P. Lussier, was employed by the defendant, R.H. Creed Ice Company;
- b. The Defendant was an employer within the meaning of the Workers' Compensation Act;
- c. St. Paul Fire and Marine Insurance Company was the workers' compensation carrier for the defendant;
- d. The Claimant suffered a traumatic amputation of his right leg below the knee;
- e. The Claimant's injury arose out of and in the course of his employment with the defendant;
- f. The Claimant's average weekly wage for the twelve weeks preceding the accident was \$608.00 resulting in a weekly compensation rate of \$405.33 which was increased to \$429.24 on July 1, 1991;
- g. The Claimant is not married and has no dependents under the age of 21.

2. On April 1, 1991, the Defendant filed a First Report of Injury.

3. On July 30, 1991, the Department approved a Form 21, Agreement for Temporary Total Disability Compensation, signed by the Claimant and the Defendant. Pursuant to this Agreement, the Defendant began paying the Claimant \$405.33 a week beginning on April 5, 1991.

4. On July 1, 1991, the Claimant's weekly compensation was increased to \$429.24.

5. On April 20, 1992, the Defendant discontinued Temporary Total Disability Compensation to the Claimant on the grounds that he had reached an end medical result.

6. On April 20, 1992, the parties filed a Stipulation whereby St. Paul Fire and Marine Insurance Company advanced funds to the Claimant for the purpose of his attending Emery Aviation College in Colorado Springs, Colorado with the understanding that the Claimant and St. Paul would seek a determination from the Department as to whether St. Paul was obligated by virtue of 21 V.S.A. §641(b) to pay for vocational rehabilitation of the Claimant

or whether said funds would be considered payment of Permanent Partial Disability Compensation.

7. The following documents were offered into evidence without objection:

Claimant's Exhibit 1	Employer's First Report of Injury.
Claimant's Exhibit 2	Wage Statement.
Claimant's Exhibit 3	Agreement for Temporary Total Disability Compensation.
Claimant's Exhibit 4	Notice of Change in Compensation Rate
Claimant's Exhibit 5	Rehabilitation Summaries of Ann Slattery dated November 27, 1991, February 24, 1992 and March 27, 1992.
Claimant's Exhibit 6	Letter of Patricia Whitmer dated January 9, 1992.
Claimant's Exhibit 7	Deposition of Peter C. Stickney, M.D. taken on March 11, 1992.
Claimant's Exhibit 8	Deposition of Charles F. Carr, M.D. taken on March 11, 1992.
Claimant's Exhibit 9	Mary Hitchcock Memorial Hospital Operative Reports dated April 1, 1991; April 2, 1991; April 4, 1991; April 12, 1991; April 15, 1991; April 18, 1991; April 23, 1991; January 2, 1992.
Claimant's Exhibit 10	Bills for prosthetic device.
Claimant's Exhibit 11	Report of Steven M. Kalisch, Ph D. dated February 18, 1992.
Claimant's Exhibit 12	Tuition bills from Emery Aviation College.
Claimant's Exhibit 13	Travel expenses of the Claimant.
Claimant's Exhibit 14	Emery Aviation College Catalog.
Claimant's Exhibit 15	Statement of Attorney's Fees.
Claimant's Exhibit 16	Letter of Ed Behr dated July 7, 1992.
Claimant's Exhibit 17	Deposition of Joan Freeman dated July 10, 1992.

- Defendant's Exhibit 1      Vocational Rehabilitation Reports from Comprehensive Rehabilitation Associates.
- Defendant's Exhibit 2      Vocational Rehabilitation Reports from St. Paul Insurance Company.
- Defendant's Exhibit 3      Vocational Rehabilitation Reports from the State of Vermont.
- Defendant's Exhibit 4      Medical Records from Dr. Carr.
- Defendant's Exhibit 5      Medical Records from Dr. Ford.

### **FINDINGS**

Based on the evidence and testimony presented at the hearing, I find:

1. The stipulations set forth above are true and the exhibits listed above are admitted into evidence.
2. The Claimant was plant operations manager for the Defendant, which is in the business of manufacturing bag and block ice for wholesale and retail sale.
3. On April 1, 1991, the Claimant was working alone in the "ice room" at the Defendant's plant in Rutland, Vermont. He was trying to prevent ice cubes in the storage bin from freezing together and clogging the conveyor.
4. The conveyor is a horizontal stainless steel screw approximately fifteen inches in diameter and twenty feet long set in a trough in the floor of the ice room. The auger conveyor was not enclosed in a protective housing.
5. The Claimant was standing on a rail examining the storage bin when he slipped and fell into the conveyor.
6. His foot became trapped in the auger, and as he was trying to free himself, the auger started turning.
7. The Claimant was unable to reach the shut-off switch.
8. As the auger continued to turn, the Claimant saw his leg begin to be severed. He screamed for help but no one heard him.
9. He ripped what remained of his lower right leg from the machine. He was bleeding profusely and continued to yell for help.
10. The Claimant crawled to the door of the office and banged on the door, finally getting the attention of the other employees.

11. The Claimant instructed one of the employees to use his belt as a tourniquet until the ambulance arrived.
12. The Claimant was transported to Rutland Regional Medical Center and then at his request to Dartmouth Hitchcock.
13. After the initial surgery on the date of the accident, the Claimant's wound became severely infected. As a result he underwent seven operations in three weeks.
14. Although the traumatic amputation was only three inches above the Claimant's ankle, the surgeries removed more of his leg, which is now amputated four inches below his knee.
15. On May 6, 1991, the Claimant was discharged from Dartmouth Hitchcock. He was admitted to Northeast Rehabilitation Hospital in Salem, New Hampshire, where he eventually was fitted with a prosthesis.
16. The Claimant experiences recurring nightmares about the accident. His testimony at the hearing in which he described the accident was very difficult for him. He is distressed by reminders of the accident, such as the sight of ice machines or R.H. Creed Ice trucks.
17. All of the Claimant's health care providers and vocational rehabilitation consultants agree that the Claimant should not attempt to return to refrigeration work because of the emotional problems.
18. In connection with obtaining his medical certificate from the FAA to begin aviation training, the Claimant submitted evidence regarding his physical and mental fitness.
19. Joan Freeman, a clinical social worker, counseled the Claimant from December, 1991, to April, 1992. Ms. Freeman has an undergraduate degree in education from Newark State College and a masters degree in social work from Adelphi University.
20. Ms. Freeman testified that the Claimant has a 35% whole person impairment resulting from post traumatic stress disorder caused by his accident.
21. Ms. Freeman did not perform any psychological testing on the Claimant and acknowledged that she is not qualified to perform such testing.
22. This is the first impairment rating Ms. Freeman has done and she has no training in the use of the AMA Guides. She reviewed the chapter in the Second Edition relating to Mental and Behavioral Disorders, but did not read the Preface or the Introduction.

23. The forward to the Second Edition of the AMA Guides states that all users should read the Preface and the two Appendices on report preparation and terminology before using the Guides.

24. Dr. Stephen Kalisch, a clinical psychologist, conducted an independent medical examination of the Claimant on February 18, 1992. His report stated that the "outstanding clinical impression" was of post traumatic stress disorder; however, Dr. Kalisch did not do an impairment rating.

### CONCLUSIONS

Based on the foregoing findings of fact, I conclude the following:

1. In workers' compensation cases the claimant has the burden of establishing all facts essential to the rights asserted. King v. Snide, 144 Vt. 395 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion, or surmise, that the incident complained of was the cause of the injury. Burton v. Holden and Martin Lumber Company, 112 Vt. 17 (1941). Where the claimant's injury is obscure and a layman could have no well-grounded opinion as to its causation, expert testimony is the sole means of laying a foundation for an award. Lapan v. Berno's, Inc. 137 Vt. 393 (1979).

2. The Claimant has offered no evidence in support of his position that he had not reached a medical end result with respect to his physical injury by April 20, 1992, the date on which the Defendant discontinued temporary total compensation. Therefore, the claim for additional temporary total compensation with respect to his physical injury is denied.

3. The parties have agreed that the Claimant is entitled to 175 weeks of permanent partial disability compensation for his below the knee amputation. The Claimant seeks additional permanent partial disability for mental impairment associated with his injury. The record supports a finding that the Claimant suffers from post traumatic stress disorder. Even the Defendant's expert witness, Dr. Kalisch, concurs that the Claimant has such a disorder. However, Dr. Kalisch does not give an impairment rating. The only impairment rating offered by the Claimant was that of Ms. Freeman, a social worker, who has no medical training or prior experience with impairment ratings and who conducted no psychological testing on the Claimant. I conclude that while the Claimant has proven that he suffers from post traumatic stress disorder, Ms. Freeman's rating is not sufficient to support an award for temporary or permanent disability. Therefore, the case will be remanded to the hearing officer for a determination of the extent of any temporary or permanent disability caused by the Claimant's post traumatic stress disorder.

**ORDER**

Therefore, based on the foregoing CONCLUSIONS and FINDINGS the Defendant or in the event of its default The St. Paul Insurance Company is hereby ORDERED to:

1. Continue paying to the Claimant 175 weeks of permanent partial compensation pursuant to a Modification Agreement entered into by the parties.
2. Pay the Claimant's medical bills related to treatment of his post traumatic stress disorder.
3. This case is hereby remanded to the hearing officer for the purpose of taking additional evidence on the Claimant's disability caused by his post traumatic stress disorder.

DATED at Montpelier, Vermont this 17<sup>th</sup> day of December, 1992.

  
Dana J. Cole-Levesque  
Commissioner